*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ W.P.Nos.30602, 29326, 29327 and 32265 of 1997

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% 02.12.2005

Bandugula Kishan, S/o B. Narasaiah, aged about 40 years, Occ: Senior Marketing Officer, A.P. Agro Ind., Dvl. Copn., Nizamabad, Nizamabad District.

… Petitioner

Vs.

$ The Managing Director and Vice Chairman, A.P.State Agro Industries Development Corporation Ltd., Hyderabad.

… Respondent

! **Counsel for the Petitioners: G. Jayaprakash Babu**

^ Counsel for respondent: Sri Meher Chand Noori

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>Head Note

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(1995) 1 SCC 184

2 2004(2) ALD 599

3 2004(4) ALD 181

4 AIR 1962 SC 36

5 AIR 1976 SC 490;

6AIR 1964 SC 1823

7AIR 1997 SC 645

8 AIR 1995 SC 1371

9AIR 1991 SC 2288

[10] 2003 (6) ALT 390

[11] (1999)7 SCC 209

[12] AIR 1973 SC 2641

[13] (1982)2 SCC 273

[14] W.P.No. 26143 of 1997, dt:05.04.1999

[15] (2002)2 SCC 333

[16] 1992 Suppl (3) SCC 217

[17] (2005) 1 SCC 394

[18] AIR 1976 SC 490

[19] AIR 1997 SC 303

[20] (1975)3 SCC 76

[21] (1993) 3 SCC 184

[22] (1980) 3 SCC 29

[23] (1985) 3 SCC 198

[24] (1992)4 SCC 118

[25] (1999) 2 SCC 317

[26] (2000) 10 SCC 525

[27] (2003) 2 SCC 632

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.Nos.30602, 29326, 29327 and 32265 of 1997

COMMON JUDGMENT:

W.P.No.29326 of 1997 is filed, by two senior marketing officers of the A.P. State Agro Industries Development Corporation, seeking a declaration that the proceeding dated 18.10.97 of the 1st respondent is arbitrary, illegal, in violation of principles of natural justice and in violation of Articles 14, 15(4), 16, 16(4), 21, 39 and 41 of the Constitution of India and consequently to direct the respondents to continue the petitioners as Senior Officers or in any other equivalent category.

W.P.NO.29327 of 1997 is filed by the then marketing manager of A.P. State Agro Industries Development Corporation questioning the proceedings of the 1st respondent dated 29.10.1997 as arbitrary, illegal and in violation of his fundamental rights and the directive principles of State policy.

W.P. No.30602 of 1997 is filed by two erstwhile senior marketing Officers of the A.P. State Agro Industries Development Corporation questioning the proceedings of the 1st respondent, in Proc.No.AMII:JM:9533:93 dated 18.10.1997 as illegal and

W.P.32265 of 1997 is filed by an erstwhile senior officer of the A.P. State Agro Industries Development Corporation questioning the proceedings of the 1st respondent dated 17.11.1997 as violating principles of natural justice, in violation of G.O.Ms.No.121, Social Welfare (L-I) Department dated 31.10.1996 and in violation of the fundamental rights and directive principles of State Policy.

Since the action of the 1st respondent in terminating the services of the petitioners herein, as an economy measure, is impugned in these four writ petitions,

they were all heard together and are now being disposed of by a common order. The parties shall hereinafter be referred to as they are arrayed in W.P.No.30602 of 1997.

All the petitioners herein, belong to the Scheduled Castes, and place reliance on G.O.Ms.No.121 dated 31.10.1996 to contend that they are entitled for special protection by way of creation of super numerary posts and that their services should be continued in the 1st respondent – Corporation.

Facts, as stated in W.P.No.30602 of 1997, are illustrative of the batch of four cases, and as such are being referred to. Petitioners are agriculture graduates and were earlier employed in the A.P. Cooperative Seeds Growers Federation Limited. Pursuant to a notification issued by the 1st respondent to fill up back log vacancies, of Regional Managers and Senior Marketing Officers, in a special drive in 1990, they had applied for the posts of Senior Marketing Officers and underwent a process of selection by a duly constituted five member committee. On their being selected as senior marketing officers, they were appointed on 7.8.1991, consequent to which they resigned from the A.P. Oil Seeds Growers Federation and joined the 1st respondent – Corporation.

Petitioners would submit that the 2nd respondent appointed an Expert Committee under the Chairmanship of Sri K.Subrahmanyam, I.A.S to examine the working of public sector undertakings, that the Committee recommended restructuring of the A.P. State Agro Industries Corporation and closing down of the Agro Industries Development Corporation, disposal of certain assets, diversification of activities and retrenchment of surplus staff, that the Cabinet Sub-Committee examined the recommendations and forwarded it to the Government for its acceptance, pursuant to which the Government directed closure, of the Agro Chemical Division of the 1st respondent, in G.O.Ms.No.282, Agricultural and Cooperation (FP-I) Department dated 8.7.1997 and ordered that the NMRs be retrenched, the deputationists be sent back to their parent department and that employees not covered under the Industrial Disputes Act be discharged from service.

Petitioners would submit that in order to ensure that there were sufficient number of scheduled caste officers available in the Corporation, in compliance with the rules of reservation, as the Corporation has neither been wound up nor closed

and is functioning with other divisions like implementation section, land development sanction etc, they should not have been thrown out of employment and instead should have been absorbed in any of the other sections of the Corporation or any other department of the government. It is stated that persons juniors to the petitioners, in cadre of senior marketing officers and equal cadres, were being continued in other divisions whereas the petitioners were sought to be terminated, which action is contended to be arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India. Reference is made to the minutes of the meeting of the Board of Directors held on 22.10.1996 and 4.1.1997 wherein the decision to fill up backlog vacancies in posts, reserved for Scheduled Castes, which were still available in the Corporation, is said to have been taken. It is contended that on the one hand, the Corporation was seeking to fill up backlog vacancies still available in the Corporation and on the other hand discharging scheduled caste employees who were regularly appointed in the limited recruitment held earlier for filling up backlog reserved vacancies. Petitioners would contend that they had left their earlier job and joined in the respondent corporation hoping for a better future, that they did not opt for a particular division but were merely posted in the agro chemical division of the corporation on administrative grounds, and merely because the division in which they were posted had been closed down, the respondent Corporation was not entitled to terminate the services of the petitioners and the Corporation should, instead, have adjusted them in its other divisions. Reference is made to G.O.Ms.NO.121, Social Welfare Department dated 31.10.1996 issued, by the government, in compliance with the directions of the Supreme court in **Government of A.P. v. Balamusalaiah**. Petitioners would submit that, as per G.O.Ms.No.121, even if there are no vacancies, supernumerary posts have to be created for continuation of Scheduled Caste employees and if any of them are required to be retrenched they should be adjusted against future vacancies. It is stated that the Corporation introduced a voluntary retirement scheme for persons who were to be sent out consequent upon its decision to close down the agro chemicals division, that the petitioners were being forced to sign on an unconditional undertaking to opt for V.R.S. and since the petitioners did not intend to take VRS and desired to continue in the Corporation, they had chosen not to exercise their option for V.R.S., though they had completed 40 years of age. Petitioners were informed, vide proceedings of the 1st respondent dated 18.10.1997, that if the they did not exercise option for V.R.S. on or before 27.10.1997, it would be construed that they were not

interested in exercising unconditional option and that they were prepared for termination/retrenchment. The order asking the petitioners to opt for V.R.S. is impugned in this writ petition, as, in effect, being an order of termination.

A counter affidavit is filed on behalf of the 1st respondent wherein it is stated that the agro chemicals activity of the respondent – Corporation, including the pesticides formulation units at Khammam and Kurnool, had been closed down and the posts operated for the said activities stood abolished. It is stated that the Sri K.Subrahmanyam Committee had not recommended for restructuring of the A.P. State Agro Industries Development Corporation and had instead directed its winding up with attendant disposal of certain assets. Respondents would submit that it is the Cabinet Sub-committee which had recommended restructuring of the A.P. State Agro Industries Development Corporation duly closing down the agro chemicals division, disposal of unproductive assets of the Corporation and for retrenching the staff working in the said division, that the cabinet sub-committee had recommended that the respondent – Corporation be continued, with land development activity as its focal activity and to promote and propagate modern agricultural implements, as a nodal agency in the State. Reference is made to G.O.Ms.No.282, Agriculture & Cooperation (FP.I) Department dated 8.7.1997 which provided for closing down the aforesaid activities including two fruit preservation units and for extension of V.R.S. benefits to such of those employees whose services were liable to be terminated or retrenched on account of closure of the said activities. It is stated that while the State of Andhra Pradesh was a major share holder, holding 72% of the shares of the respondent company, the remaining shares were held by the Central Government, that the respondent – company is not fettered, under its Articles of Association, by any of the government orders or directions and it is for the Board of Directors to pass an appropriate resolution adopting or deciding to implement policies and programmes of the state government. It is stated that some of the decisions require approval of the general body of the company and that government orders are not per se binding on the respondent company. While admitting that the petitioners were appointed in backlog reserved vacancies, that the respondent – Corporation has not been totally wound up and that other divisions such as administration, implements, land development etc., continued to function, it is stated that the petitioners are graduates in agricultural sciences and were recruited exclusively for the agro chemical division which deals with distribution of fertilizers, manufacture and sale of

pesticides etc, that the qualifications and experience which the petitioners possess are different and dissimilar to the qualifications required for holding posts in the remaining divisions and that the petitioners are not suitable for being accommodated in any other division the respondent – corporation. It is stated that in view of the closure of certain activities, to which the petitioners were exclusively recruited and had worked therein, the respondent had no other alternative but to dispense with their services along with other employees who were similarly situated. It is contended that since the activity, for which the petitioners were recruited, is no longer carried on, the question of continuing any employee or maintaining the rule of reservation does not arise, that the respondent – Corporation had issued several circulars regarding closure and restructuring of its activities, consequent termination or retrenchment of the staff, that V.R.S. had been offered to employees in 1997 and that subsequently, vide letter dated 18.10.1997, employees who had not opted for V.R.S. were explained the pros and cons of the Scheme. It is contended that the petitioners had chosen not to opt for V.R.S though a higher package of compensation had been offered under the said scheme than what they would have been entitled to consequent upon their termination under the service rules of the respondent – corporation. While denying the allegation that the petitioners were posted in a certain division as per administrative convenience, it is stated that the petitioners were exclusively recruited for and had worked throughout in the agro chemicals division. It is further stated that there is no other activity where the petitioners could have been accommodated in relation to their qualification, experience and career background and that the petitioners were neither qualified nor functionally suitable to be accommodated in any posts operated by engineering/professional personnel. It is contended that G.O.Ms.No.121 dated 31.10.1996 has no application to the respondent – corporation and that, in any event, the said G.O. contemplates creation of supernumerary posts in case of retrenchment consequent on re-organization of the department or reduction of posts and not in case of closure of activities in an industrial establishment. The respondent would contend that the petitioners cannot compare themselves with employees in other divisions who are being continued and they cannot claim to be seniors to such employees, since they are not similarly situated. It is stated that cadres in engineering or finance divisions were essentially different and dissimilar and did not form part of a common cadre along with the cadre of senior marketing officers. The allegations of discrimination and violation of Articles 14 and 16 of the Constitution of

India are denied.

A reply affidavit is filed by the petitioner wherein the contention of the respondent that the petitioners were exclusively recruited for agro chemical activities is denied. It is stated that the petitioners' appointment order dated 7.8.1991 would show that they were appointed as employees of the Corporation and not for any particular division or any particular activity and therefore their seniority in the entire Corporation was required to be considered and not division-wise. The petitioners, while giving the names of others who had been accommodated elsewhere, would deny the allegation that they were not qualified and not suitable for being accommodated in any other activity of the respondent – Corporation. They would contend that closing down a wing of the Corporation was different from closing down the Corporation in its entirety and in cases where restructuring of the Corporation had resulted in closure of one division, the services of the junior most officer in the entire corporation, that too following the rule of reservation, should have been terminated instead of terminating the services of all officers and employees working in the agro chemicals division. It is stated that while the petitioners were recruited as employees of the Corporation, their posting in the agro chemicals division was at discretion of the management and merely because some employees were posted in a particular division, which was subsequently decided to be closed, would not entitle the Corporation to terminate their services, while retaining those appointed subsequent to them, only on the ground that they were working in divisions whose activities were being continued. The petitioners would seek application of the principle of 'last come first go' in the entire corporation, in which event the junior most employees, in the corporation as a whole, ought to have been sent out first. While contending that G.O.Ms.No.121 would apply to them, petitioners would refer to the cases of Sri Y.V.Raghavaiah, working in the A.C. Division, who was posted in the personnel, legal and engineering divisions and was allowed to retire on superannuation, Sri Vidyasagar and Sri Panduranga Reddy, who though engineers were posted in the personnel division, and Sri Latchi Raju, who though an engineer had worked for several years as a Dy. Manager and a Manager in the agro chemical division. Petitioners would submit that many of the engineering staff were posted for physical verification in the agro chemicals division and there was no reason why agriculture graduates could not be accommodated in other divisions. Petitioners

would also refer to G.O.Ms.No.114, Agriculture & Cooperation (FP-I) Department, dated 20.5.2005 whereby permission was accorded, by the government, for setting up of agro rythu seva kendras for routing products like seeds, fertilizers, pesticides and implements for supply to the farmers and ensuring quality and price line. Petitioners would contend that since the policy of the Government, under G.O.Ms.No.114, dated 20.05.2005, was to revive the activity of the closed agro chemicals division, which was hitherto marketing fertilizers and pesticides, they should be taken back to duty and continued in service.

Sri G. Jayaprakash Babu, learned counsel for the petitioners, would submit that appointment of the petitioners was in the A.P. Agro Industries Development Corporation and not in any particular division. Learned counsel would refer to the appointment order dated 06.05.1987 and submit that clause - 6 thereof was clear in that the services of the petitioners were liable to be transferred to any other department/branch in the discretion of the management which would indicate that their appointment was in the Corporation, and not to in any particular division. Learned counsel would submit that since appointments were made to the Corporation and not any particular division, the seniority in the Corporation was required to be taken into account while applying the principle of 'last come, first go' in addition to following the roster system. Learned counsel would submit that G.O.Ms.No.121 dated 31.10.1996 was issued by the government pursuant to the judgment of the Supreme Court in **Balamusalaiah** (1 supra) and as per the guide lines prescribed thereunder the petitioners were required to be continued, if necessary, by creating supernumerary posts. Learned counsel would submit that posting of the petitioners, in the agro chemicals division, was at the option of the management and did not entitle the respondents to terminate their services merely on the ground that the division, in which they were posted, had been closed. Learned counsel would submit that the posts of area managers, assistant managers, and senior marketing officers are equal post and are inter-transferable. Similarly marketing managers, deputy managers and regional marketing managers are equal posts and are inter-changeable and as such the junior most in these categories, in the entire corporation, were required to be sent out first, on the application of the principle of 'last come first go'. Continuing juniors, while terminating the services of seniors on the ground that they were posted in the agro chemicals division, is contended to be arbitrary and illegal. Learned counsel would submit that if the petitioners are sent out, there will be no scheduled caste employee left in the

executive categories of the corporation and would refer to the list, furnished by the respondents to this court, to contend that while 37 employees, belonging to the Scheduled castes, were continued in service, they were all working in Class III and Class IV posts. It is also contended that subjects in agricultural engineering form part and parcel of the subjects prescribed for B.Sc. (Agriculture) and that the petitioners are competent to work in any of the other existing divisions of the respondent – Corporation. Learned counsel would submit that the functions which were hitherto carried out through the agro vikraya seva kendras, now named and styled as agro rythu seva kendras, established pursuant to G.O.Ms.No.114, in effect, amounted to revival of the said division, and since there were 60 agriculture graduates, apart from other staff, working earlier in the division, to supervise the agro vikraya seva kendras, prior to its closure, and as the activity is now again being undertaken, albeit in the name of agro rythu seva kendras, the petitioners could be accommodated in jobs available for carrying out the said activity. Learned counsel would submit that two of the petitioners herein had been sent on deputation to the state warehousing Corporation but, on revival of the activities of agro rythu seva kendras, were called back and assigned duties in the corporation which they were discharging prior to the closure of the agro chemicals division. Learned counsel would submit that employees in other departments have been posted as marketing executives in different districts, though the qualification prescribed for the said post is graduation in agriculture, that terminating the services of the petitioners and posting others, who were not qualified as marketing executives, would render the action of the respondents arbitrary and illegal, that the respondents had decided to open 210 centres of agro rythu seva kendras in 10 districts and proposed to extend it to other districts in the next spell, that to ensure its smooth functioning and proper supervision, qualified and experienced agriculture graduates are required and that the petitioners are best suited to be appointed in such posts. Learned counsel would refer to Sri Sudhakar Reddy, Senior Scientist, earlier working in the agricultural university, who was brought on deputation to the respondent – corporation as manager - Implements, which is alleged to be an activity similar to the activities carried on earlier by the agro chemicals division. According to the learned counsel, this would indicate that the Corporation requires personnel to manage activities similar to the activities carried on earlier by the agro chemicals division and that this system is being resorted to only to accommodate persons for extraneous reasons. Reference is also made to Sri C.S. Reddy, M.Sc. (Agriculture), a retired employee of

KRIBHCO, who is alleged to have been brought into the respondent corporation as a marketing executive. It is contended that the petitioners could have been accommodated instead of bringing employees from outside. Learned counsel would submit that while there are 311 employees in the corporation, the scheduled castes are not adequately represented, much less, in the cadre of officers. Learned counsel would submit that there is not even a single scheduled caste employee in the officers cadre which makes a mockery of the rule of reservation and the special protection conferred on them under the Constitution. Learned counsel would rely on **Irrigation Development Employees Association v. Government of A.P., B.Rehelamma v. A.P. State Agro Industries Development Corporation Limited, Hyderabad** to contend that the principle, of operating roster backwards, must be extended to the petitioners and that they should be given the benefit of being continued in service. Learned counsel would also refer to the judgments in W.P.No.19135 of 2002 dated 30.10.2003 wherein the benefit of G.O.Ms.NO.121 dated 30.10.1996 was extended to certain employees. Reference is also made to the order of this Court in W.P.No.28049 of 1995 dated 25.7.2005 wherein certain junior marketing officers appointed on N.M.R. basis were directed to be considered for regularization. Learned counsel would submit that if employees were found to be surplus, the N.M.Rs. should have been the first to be discontinued from service. On the other hand they were being recommended for regularization whereas the petitioners, who had put in more than 20 years of regular service, were sent out. Reference is also made to three employees, working in Allwyn Company who, on its closure, were taken into the 1st respondent – corporation. Learned counsel would submit that the government had sanctioned Rs.15 Crores to the 1st respondent corporation, (Rs.10 Crores from the Central Marketing Fund and Rs.5 Crores from the General Fund), and with the said budget the corporation was planning to monitor the agro rythu seva kendras which required agriculture graduates with experience similar to what the petitioners possess. It is contended that the government had also recommended that the 1st respondent revive the closed units i.e., fruit preservation unit at Anantarajupet, Cuddapah District and the pesticides formulation units, at Kurnool and Khammam for which experienced agriculture graduates were required, and that the petitioners were therefore entitled to be continued in these posts. Learned counsel would rely on **General Manager, Southern Railway v. Rangachari; State of Kerala V. N.M. Thomas; R.Chitralekha v. State of Mysore; Air India Statutory Corporation v. United Labour Union; R.K. Sabharwal v.**

State of Punjab; Comptroller & Auditor General of India v. Mohan Lal Mehrotra in this regard.

Sri Meher Chand Noori, learned counsel for the respondent, would submit that the petitioners were recruited and appointed as senior marketing officers in the agro chemicals division and their posts were exclusively connected with agro chemicals activity. He would submit that the Corporation has not adopted G.O.Ms.No.121 dated 31.10.1996 and that the said G.O. has no application to employees of the Corporation. According to the learned counsel, the petitioners are not eligible to hold similar posts in the other divisions namely, administration, agricultural engineering, finance & accounts divisions since they do not possess the required qualifications, and that abolition of the posts of senior marketing officers, to which the petitioners were recruited, was due to closure of the agro chemicals division and as a consequence, the entire marketing staff was declared surplus and their services terminated. Learned counsel would refer in detail to the voluntary retirement scheme, as provided in Circular dated 11.7.1997, and contend that the said circular was subject matter of challenge in W.P.No.28456 of 1997 and this Court, by order dated 22.1.1999, had directed the respondents therein to accept the V.R.S. applications filed by the petitioners as per G.O.Ms.No.282 dated 8.7.1997, and to give them all terminal benefits, after deducting the amounts due to the corporation, within a period of three months. Learned counsel would submit that this Court, in W.P.No.32365 of 1997, had upheld the validity of the voluntary retirement scheme and had given one more opportunity to employees to submit their applications for voluntary retirement. He would also refer to W.P.No.26143 of 1997 and W.P.No.31959 of 1997 wherein this Court, by order dated 5.4.1999, had upheld the voluntary retirement scheme and to have given one more opportunity to the petitioners to submit their applications afresh under the voluntary retirement scheme. It is stated that 55 officers were exclusively appointed to the agro chemicals division and except seven, (the six petitioners herein and one Sri G.Rambabu who filed W.P.No.35924 of 1997), all the remaining 48 employees in various cadres had opted for V.R.S. Learned counsel would submit that the contentions raised, by the petitioners herein, were considered in **S.Rami Reddy v. Vice-Chairman and Managing Director, A.P. State Irrigation Development Corporation Ltd,** as confirmed by the Division Bench of this Court in **Irrigation Employees**

Development Association (2 supra) and followed in **B.Rehelamma** (3 supra). Learned counsel would contend that certain clauses in the voluntary retirement scheme were upheld in W.P.2477 of 2002 dated 5.9.2002. Learned counsel would refer to **Ajit Singh (II) v. State of Punjab** to submit that Article 16(4) of the Constitution enables the State to provide reservation and does not confer any fundamental rights on the petitioners or impose any constitutional duties, on the State and its instrumentalities, to provide reservation. Learned counsel would submit that the judgments cited on behalf of the petitioners cannot be made applicable to cases of abolition of posts or cases where the voluntary retirement scheme is extended to employees. Learned counsel would rely on **N. Ramanatha Pillai v. State of Kerala**; **K. Rajendran v. State of Tamilnadu** in support of his submission that creation and abolition of posts is the prerogative of the administration and as long as such a decision is taken in good faith, it is not open to judicial scrutiny. Learned counsel would also refer to **Irrigation Development Employees Association** (2 supra) to contend that G.O.Ms.No.121 dated 31.10.1996 has been held to be applicable only to government departments and does not have universal application and since the Corporation did not adopt the said G.O. it is not applicable to employees of the Corporation. It is contended that the present cadre strength of the Corporation is 278, out of which 36 belong to S.C., 2 belong to S.T. and 135 to the backward classes. Learned counsel would submit that Sri P.Sudhakhar Reddy was brought on deputation to head the farm mechanisation division, that his educational qualification was B.E. (Agricultural Engineering), that he had field experience and specilisation in farm mechanism including research and development, that he was dealing with the said subject in the A.P. Agricultural University and was brought on deputation against the sanctioned post of Manager (Agriculture Engineering), since the respondent corporation has been appointed as the nodal agency to supply farm mechanization and plant protection equipment to the farming community in the State. In so far as the appointment of Sri C.S. Reddy is concerned, it is stated that a proposal was sent to the government to accord permission to utilize his services during the season on contract basis as there was no sanctioned post of advisor in the sanctioned cadre strength and that the matter is still under consideration of the government. It is stated that the respondent – corporation has no administrative control over the agro rythu seva kendras, except to supply stocks received from various manufacturers, that the Corporation is ready to offer the agro rythu seva kendras to any unemployed youth and that the petitioners

were also at liberty to make an application to avail the facility of the Scheme, as it is a build and own scheme. Learned counsel would refer to the organization chart and submit that except the petitioners all employees of the closed activities had opted for V.R.S., and that at present the Corporation has four wings (a) Agricultural Engineering Wing (b) Finance & Accounts Wing (c) Personnel and Administration Wing and (d) Secretarial Section. According to the learned counsel, each of these divisions have a separate cadre strength and the qualifications prescribed for one division differ from the other. While the qualifications prescribed for agro chemicals division is B.Sc. (Agriculture)/M.Sc. (Agriculture), the qualifications prescribed for Agricultural Engineering is B.Tech., Agrl.Engg/Mechanical Engineering. It is stated that though the corporation has a sanctioned post of Company Secretary/General Manager, due to its precarious financial position, no person has been appointed and that the services of a Company Secretary was engaged on retainership basis since the Companies Act mandates a company secretary being appointed. Learned counsel would deny that the petitioners could be appointed to any post and would contend that they do not possess the qualifications prescribed for posts in other divisions. He would submit that while the erstwhile agro vikraya seva kendras were outlets of the Corporation under the administrative control of the Regional Manager, assisted by senior marketing officers/marketing officers and a private Commission Agent, the present agro rythu seva kendras are not under the administrative control of the Corporation. According to the learned counsel, the Scheme, in G.O.Ms.No. 114 dated 20.05.2005, envisages providing employment to the educated rural youth and requires the Corporation merely to act as a facilitative link between the manufacturers of fertilizers and the enterprenuers. According to the learned counsel, the agro rythu seva kendras can be established on a licence being obtained, on a bank guarantee/cash deposit of Rs.3 lakhs being furnished and the applicants having their own godowns. Learned counsel would submit that entrustment of the task, of monitoring the activities of the agro rythu seva kendras, was only to extract work from the two senior marketing officers instead of keeping them idle since they were being continued pursuant to the interim orders of this Court and not due to revival of the agro chemicals business activity, that there was no need to re-employ erstwhile employees of the agro-chemical division since the activities relating to the agro rythu seva kendras could be managed with the existing approved cadre strength itself. Learned Counsel would submit that the Corporation is presently having a reconstituted Board of Directors with four Official Directors.

Before examining the rival contentions, it is necessary to refer to G.O.Ms.No.282 dated 8.7.1997 and the appointment orders issued to the petitioners at the time of their initial appointment. The agro chemicals division was closed pursuant to G.O.Ms.No. 282 dated 08.07.1997 and the employees of the corporation were offered VRS. The Government, after taking note of the recommendations of the cabinet sub-committee, that the respondent corporation had totally failed in its objectives and that the activities of the corporation needs to be restructured by closing down the agro chemicals division, passed necessary orders in G.O.Ms.No. 282 Agriculture and Cooperation (FP.I) Department dated 08.07.1997. Clauses (a) and (b) thereof are relevant for the present case and read as under:

a) To close down the Agro Chemicals Division of the Corporation: The Agro Chemicals Division has 55 persons exclusively recruited for the Agro Chemicals Division, 200 from common cadres and 36 NMRs and deputationists. The deputationists will be sent back to the parent organizations. The 55 officers exclusively recruited for the Agro Chemicals Division will be retrenched as they could not come under the purview of the Industrial Disputes Act. Of the 200 common cadre employees some will come under the Industrial Disputes Act and the others will not come. The NMRs working in the Agro Chemical Division are governed by the Industrial Disputes Act. Persons governed by the Industrial Disputes Act will be retrenched following the procedure laid down therein. Employees who are not workmen coming under the Industrial Disputes Act will be discharged without paying any compensation. Closing down the Agro Chemicals Division also covers closing down of the Pesticides units at Kurnool and Khammam. Those employees who have completed the age of 50 years and have put in 20 years of service will be discharged as per the Service Rules.

b) In the other divisions of the Corporation, the employees who have attained the age of 50 years and have put in 20 years of service or otherwise and whose services are no longer required by the Corporation shall be discharged as per the Service Rules.

The government took a policy decision to adopt a humane exit policy to provide voluntary retirement with exgratia benefits and directed that, while implementing the orders in clause (a) and (b), the benefits as per the voluntary retirement scheme be made available to the employees.

In **K. Krishnam Raju Vs. Government of A.P** the validity of G.O.Ms.No.282, dated 08.07.1997, whereby the respondent corporation decided to close down its agro chemicals division and retrench officers and staff working therein, was the subject matter of challenge. This court, by order dated 05.04.1999, held that while

initially appointment was done in the corporation, it was for the respondent corporation to utilize the services of employees in any department which they decide and it was not open for the petitioners to contend that they were not employed in the agro chemicals division, that appointments were never made department-wise and were only given in the corporation and that a person employed in the company was to be posted as per the requirement of the company. This court held that the voluntary retirement scheme introduced, pursuant to G.O.Ms.No.282, and the scheme formulated by the corporation was legal and valid. On an over all view of the matter, while dismissing the writ petitions, this Court gave one more opportunity to the petitioners to accept the voluntary retirement scheme. A perusal of the order dated 07.09.1987, appointing Sri P.S.S. Ravi kumar as Marketing officer, would reveal that his appointment was to the post of Marketing Officer in the respondent corporation and not specifically to the agro chemicals division. Clause 6 of the order of appointment renders the employee liable to be transferred anywhere in Andhra Pradesh or elsewhere at the discretion of the management. While their appointment was in the corporation, the petitioners were posted in the agro chemicals division. The contention of Sri Meher Chand Noori, learned counsel for the respondents, that the petitioners were appointed exclusively in the agro chemicals division cannot therefore be accepted.

PROCEDURE ADOPTED FOR TERMINATION/RETRENCHMENT OF STAFF/OFFICERS:

The fact however remains that on their appointment in the corporation, the petitioners were posted in the agro chemicals division and were working thereat till the division was closed. It is not the case of the petitioners that the respondents had selectively terminated the services of some of the employees working in the agro chemicals division while retaining the services of others. While admitting that the services of all the employees working in the agro chemicals division were terminated and they were offered the benefits of the voluntary retirement scheme, Sri G. Jaya Prakash Babu, learned counsel for the petitioners, would however contend that despite closure of the agro chemicals division, since the seniority of employees is to be determined, taking the corporation as a whole as one single unit, the services of persons working in other divisions, who were juniors to the petitioners, ought to have been terminated first and the services of the petitioners should have

been utilized in the post vacated by these employees.

The scope of judicial review in such matters is limited. It is well settled that this court, in exercise of its extraordinary jurisdiction under Article 226 of the constitution of India, would not sit in appeal over the decision of the corporation nor would it weigh the pros and cons of the decision and substitute its wisdom for that of the decision making authority. It is only if the decision is found to be so arbitrary or irrational as to violate Articles 14 and 16 of the constitution of India would this court interfere. While the submissions of both the counsel Sri G. Jayaprakash Babu and Sri T.P. Acharya that the corporation, while deciding as to which of the employees should be offered VRS, could have reckoned the seniority of employees, taking the entire organization as one unit, is not without merit, it cannot be said that the decision taken by the respondents to terminate the services of all employees working in the agro chemicals division, pursuant to its closure, is so arbitrary and irrational as to violate Article 14 of the constitution of India. Even if it is of the view that the procedure suggested by the petitioners is better than the one adopted by the respondents, this court would not substitute its views for that of the respondent corporation. It is only if the procedure adopted by the respondent corporation is one which could not have been adopted at all or is wholly irrational and arbitrary as to violate Articles 14 and 16 of the Constitution of India, would this court interfere. Effecting retrenchment/terminating the services of all employees working in the division by offering them VRS, consequent upon closure of the agro chemical division, cannot be said either to be a method which could not have been adopted at all or to be such an arbitrary and irrational method as to fall foul of Article 14 of the Constitution of India. The procedure adopted by the respondent corporation does not, therefore, call for interference.

CREATION OF SUPERNUMERARY POSTS:

Sri G. Jaya Prakash Babu, learned counsel for the petitioners would however place reliance on G.O.Ms. No. 121 dated 31.10.1996 whereby the government decided to create supernumerary posts pursuant to the judgment of the Supreme Court in **Balamusalaiah** (1 supra) wherein the action of the government in fixing the priority for retrenchment of temporary employees was the subject matter of

challenge. Under the government order, impugned in **Balamusalaiah** (1 supra), approved probationers of the general category were required to be retrenched even before temporary incumbents belonging to Scheduled Castes and Scheduled Tribes were to be retrenched. The said G.O. was held to be arbitrary and not in tune even with Article 16(1) of the Constitution of India.

While holding that the G.O. as framed was not sustainable, the Supreme Court left it be open to the State Government to recast the GO in the light of what was stated in the judgment, if deemed necessary by it. Pursuant to the order of the Supreme Court in **Balamusalaiah** (1 supra), G.O.Ms.No.121 dated 31.10.1996 was issued.

Sri Meher Chand Noori, learned counsel for the respondent, would however contend that since the respondent corporation is a separate legal entity, government orders are not automatically binding unless they are adopted by the board of directors. Learned counsel would contend that since G.O.Ms.No. 121 dated 31.10.1996 issued by the government has not been adopted by the respondent corporation, no reliance can be placed on the said G.O. Learned counsel would point out that since the agro chemicals division, in its entirety, has been closed down the question of creation of supernumerary posts, as required under G.O.Ms.No.121 dated 31.10.1996 would not arise.

A bare reading of sections 36(1) and 291(1) of the Companies Act makes it clear that the Board of Directors of the company are bound to act in accordance with the memorandum and articles of association of the company. The corporation, a company registered under the companies Act 1956, has its own legal entity distinct and separate from that of the government. The management of the affairs of the company lies with the Board of Directors and it is therefore the Board of directors which is the primary decision making body of the corporation. As **held in BALCO Employees Union v. Union of India**:-

"……The Government could have run the industry departmentally or in any other form. When it chooses to run an industry by forming a company and it becomes its shareholder then under the provisions of the Companies Act as a shareholder, it would have a right to transfer its shares. When persons seek and get employment with such a company registered under the Companies Act, it must be presumed that they accept the right of the Directors and the shareholders to conduct the affairs of the company in accordance with law……."

While it is open to the Board of Directors of the corporation to adopt government orders, in the absence of any such adoption, government orders would not automatically apply to the corporation. A similar claim based on G.O.Ms.No. 121 dated 31.10.1996, for creation of supernumerary posts, came up for consideration in **Irrigation Development Employees Association** (2 supra) and the Division bench of this court held thus:-

"Be it as it may, G.O.No. 121 dated 31.10.1991, admittedly is applicable to Government Departments only and does not have universal application. The Corporation did not adopt the said G.O. and therefore it has no application to the employees of the Corporation…….

……..That apart the very scheme and policy of reduction in sanctioned strength and consequent abolition of posts is to ensure self-sustenance, and survival of the Corporation. The creation of supernumerary posts would be counter productive as employees to that extent of supernumerary posts created would exceed the sanctioned strength of 404 employees which would in turn be in violation of G.O.Ms.No. 50 dated 15-11-2001. Hence, we find no merit in the claim."

In A.P. Irrigation Development Corporation, whose employees had approached this Court in **Irrigation Development Employees Association** (2 supra), there was a reduction in the sanctioned strength of employees necessitating retrenchment of the surplus staff. In the present case retrenchment/termination of services had to be resorted to consequent upon closure of a division of the corporation. The Division bench judgment in **Irrigation Development Employees Association** (2 supra) squarely applies to the facts of the present case. The claim based on G.O.Ms.No. 121 dated 31.10.1996 is therefore rejected.

OPERATING THE ROSTER – BACKWARDS:

Now the question of operating the roster backwards in the case of officers and employees belonging to the Scheduled Castes. While both Sri G. Jayaprakash Babu and Sri T.P. Acharya, learned counsel for the petitioners, would urge this court to issue a mandamus to the respondent corporation to operate roster backwards contending that, consequent upon termination of the services of the petitioners, there is not even a single officer belonging either to the Scheduled Castes or to the Scheduled Tribes in the entire corporation, Sri Meherchand Noori, learned counsel for the respondents, would contend that while the question of operating the roster backwards may arise in a case where there is a reduction of sanctioned strength of a

company necessitating termination of the services of a section of the employees, the said principle has no application where a division, in its entirety, is closed down. He would submit, relying on **Ajit Singh II** (11 supra), that no mandamus can be issued to the respondent to apply the principle of roster backwards.

What operating the roster backwards means has been succinctly explained in **Bala Musalaiah** (1 supra) thus:-

"According to us, the principle and policy behind the reservation would be adequately met and would receive constitutional approval, if, while retrenching the employees, the roster followed while making appointments is adhered to. To elucidate, if the roster is operated backwards (which we shall call recycled) and if the employee to be retrenched as per normal principle be on a non-reserved point, a reserved category candidate would not be retrenched, even if as per general rule of "last in, first out" he would have been required to be retrenched. To state it differently, a reserved category candidate would be retrenched only when on the recycled path the reserved point is reached. This mode of following roster would adequately protect the reserved category candidates inasmuch as their percentage in the service or cadre would remain as it came to be when appointments were made. To explain further, if in the cadre or service reserved category candidates were holding, say seven posts and seven persons are required to be retrenched, the reserved category employees would not be retrenched even when they be the last seven as per the seniority list, which would have otherwise happened on following the normal principle. Instead of the seven reserved category candidates being retrenched as per the normal principle, the reserved category candidate on the recycled roster point alone would be retrenched, because of which the percentage of representation of such candidates in the service, as it got reflected in appointments made following the roster, would remain unaffected."

While Sri G. Jayaprakash Babu, would rely on the judgment of this court in **S. Ramireddy** (10 supra) and **Irrigation Employees Development Association** (2 supra) in support of his submission that the roster should be operated backwards, Sri Meherchand Noori would rely on the judgment of this court in **B. Rehalamma** (3 supra) to submit that in the present case, it is not possible to do so.

In **S. Ramireddy** (10 supra) this court held as under:

"It is no doubt true that the Supreme Court in Balamusalaiah has not issued any Mandamus directing the State Government to apply the roster backwards, but the fact remains that while leaving it open to the State Government to recast the G.O. in the light of what had been stated in judgment, if deemed necessary by it, the apex Court in no uncertain and categorical terms held, that the principle and policy behind reservation would be adequately met and would receive constitutional approval, if while retrenching employees, the roster followed in making appointments, is applied backwards. Had the Corporation considered this principle enunciated by the Supreme Court in Balamusalaiah, and had taken a conscious decision not to apply the principle for just and valid reasons, this

Court would not be justified in issuing Mandamus directing the Corporation to apply the roster backwards in all cases of retrenchment. Admittedly, this aspect of the matter has neither been considered by the Board of Directors of the Corporation nor by the Government while issuing directions under Article 90 of the Articles of Association, and this clearly reveals non-application of mind by the Corporation as well as the Government to the constitutional protection provided by Articles 16 and 16 (4-A) of the Constitution of India, to the employees belonging to Scheduled Castes and Scheduled Tribes."

In **Irrigation Development Employees Association** (2 supra), the division bench, while confirming the order of the single judge in **S. Ramireddy** (10 supra), held as under:

"It is required to notice that the Corporation even in case of Scheduled Castes and Scheduled Tribes employees did not apply the roster backwards but the learned Single Judge issued such directions directing the respondent Corporation to consider the case of Scheduled Castes and Scheduled Tribes employees by applying the roster backwards while identifying surplus Scheduled Castes and Scheduled Tribes employees. The learned Single Judge found that the Corporation as well as the Government failed to apply their mind and did not take into consideration the provisions of Constitution of India conferring special protection to the Scheduled Castes and Scheduled Tribes. The Constitution mandates the State to accord favoured treatment to them. Having regard to the special constitutional protection provided by Article 15, 16(4) (a) of the Constitution of India to the employees belonging to the Scheduled Castes and Scheduled Tribes, the learned Single Judge directed the Corporation to re-examine the matter and consider the feasibility of applying the reservation roster backwards in respect of the employees belonging to the Scheduled Castes and Scheduled Tribes in identification of surplus employees to whom VR Scheme is to be offered. The learned Single Judge held such policy would receive the constitutional approval of providing adequate representation to the Scheduled Castes and Scheduled Tribes in the service of the Corporation. WE are in complete agreement with the view taken by the learned Single Judge.

It is very well settled and needs no restatement that the Scheduled Castes are the most backward of the Backwards Classes, it is for that reasons, the learned Single Judge thought it fit to issue directions in the manner referred to herein above……."

Though this court in **S. Ramireddi** (10 supra) had directed the corporation to consider the feasibility of application of roster backwards and the order passed therein was confirmed by the division bench, Sri Meher Chand Noori would however contend that in **Rehelamma** (3 supra) this court, on taking note of the fact that the agro chemicals division was closed, was not inclined to grant a similar relief.

In **B.Rehelamma** (3 supra), the action of the respondent corporation in offering VRS to its surplus staff, pursuant to the closure of the agro chemicals division, was the subject matter of challenge. Among the several contentions raised was that the

principle of roster backwards should be applied, while retrenching/terminating the services of surplus Scheduled Castes and Scheduled Tribe employees. This Court held as under:

"Insofar as the question relating to application of the roster backwards in relation to the employees belonging to Scheduled Castes and Scheduled Tribes in the identification of surplus employees is concerned, the same was considered by this Court inW.P.No.17944 of 2002 and Batch, dated 25.06.2003. This Court having considered the said question in the light of the various constitutional provisions providing for reservation and safeguarding the interests of the Scheduled Castes and Scheduled Tribes and following the judgments of the Apex Court in Government of A.P. Vs. Bala Musalaiah, (1995) 1 SCC 184, came to the conclusion that the Corporation should re-examine the matter and consider the feasibility of applying the reservation roster backwards in respect of employees belonging to Scheduled Castes and Scheduled Tribes in identification of surplus employee to whom VRS is to be offered where the post have completely not been abolished, for by application of the roster backwards, the policy and rationale behind extending reservation to the backward sections of the society, would be adequately met and would receive the constitutional approval of providing adequate representation to the Scheduled Castes and Tribes in the service of the Corporation.

In the instant case, it was brought to the notice of the Court by the learned Additional Advocate-General that the posts of Auxiliary Assistant have not been completely abolished. If that be so, and having regard to the view taken by me in W.P.No.17944 of 2002 and Batch dated 25.06.2003, there should be a direction to the Corporation to re-examine the matter and consider the feasibility of applying the roster backwards in respect of the employees belonging to Scheduled Castes and Scheduled Tribes, who are working as Auxiliary Assistants, namely sole-petitioner in W.P.No.323 of 2003 and petitioner Nos. 4 and 5 inW.P.No.352 of 2003, identifying the surplus employees for offering VRS."

In **Rehalamma** (3 supra) this court upon noticing that the agro chemicals division, in its entirety, had been closed, extended application of the principle of roster backwards to the posts of Auxiliary Assistants which had not been completely abolished.

Sri G. Jaya Prakash Babu, learned counsel for the petitioner, would however urge that certain facts were not brought to the notice of this court such as the fact that the termination of the services of the petitioners had resulted in a situation where there were not even a single Scheduled castes employee, in the "executive/officer category", left in the corporation, that the corporation had regularly effected inter-divisional transfers and that the petitioners were fully qualified to hold equivalent posts in other divisions. Learned counsel would urge that the subsequent events be taken note of by this Court, particularly the fact that the functions carried out earlier through the agro vikraya seva kendras, were now being revived pursuant to

G.O.Ms.No.114, dated 20.05.2005 in the changed name of agro rytu seva kendras and that the corporation had resorted to engaging the services of retired employees and persons from other organizations, instead of continuing the petitioners in service.

PROTECTION GIVEN TO THE SCHEDULED CASTES UNDER THE CONSTITUTION

Operating the roster backwards, would not arise where the corporation, in its entirety, has been closed down. It is only where retrenchment is effected, of a section of the employees, while retaining others, would this principle apply. The corporation has adopted the methodology of terminating the services of all employees working in the agro chemicals division consequent upon its closure. If the agro chemicals division were to be taken as the unit, the roster cannot be applied backwards, since the services of all the employees of the division have been terminated. It is only if the corporation, in its entirety, is taken as one single unit, and as employees in other divisions are being continued in service, can the roster be operated backwards, enabling atleast a few officers, belonging to the Scheduled castes, being retained in service. This would, however, result in a situation where one methodology is adopted for terminating the services of employees in the open category i.e., the agro chemicals division as the unit, while a different methodology is to be adopted for terminating the services of employees belonging to the Scheduled castes i.e., the corporation, in its entirety, being taken as one single unit. Would adopting a different criteria, for terminating the services of officers and employees belonging to the Scheduled castes be legal, valid and in accordance with Articles 14 and 16 of the Constitution of India?

It is well to remember that the Scheduled Castes and Scheduled Tribes constitute the most backward of the backward classes of our society and the need to provide special protection to them has been repeatedly emphasized by Courts.

The Constitution permits the State to adopt such affirmative action as it deems necessary to uplift the backward classes of citizens to levels of equality with the rest of our countrymen. The backward classes of citizens have in the past been denied access to government services on account of their inability to compete

effectively in open selections on the basis of merit. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. The Constitution permits adoption of suitable and appropriate remedial measures to correct the continuing evil effects of prior discrimination. Classes of people saddled with disabilities rooted in history of purposeful unequal treatment and consequently relegated to social, educational, economic and political powerlessness particularly qualify to demand the extraordinary and special protection of reservation. Reservation is meant to remedy the handicap of prior discrimination impeding the access of classes of people to public administration. Reservation is a remedy or a cure for the ill effects of historical discrimination. (**Indra Sawhney v. Union of India***).*

The whole basis of reservation is to provide additional protection to the members of the Scheduled Castes as a class of persons who have been suffering since a considerable length of time due to social and educational backwardness. The Scheduled Castes occupy a special place in our Constitution. The President of India is the sole repository of the power to specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes. Our Constitution permits application of the equality clause by grant of additional protection to the disadvantaged class so as to bring them on an equal platform with the other advantaged class of people. The essence of reservations basically can be subdivided into three categories: (*i*) facilitating access to value posts or resources whereby seats are reserved in the legislature, in government services and in academic institutions; (*ii*) providing for scholarships, land allotments, grants for health care, etc.; and (*iii*) special protections like prohibiting exploitation of scheduled castes by others with a view to promote the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes who, for centuries, have been deprived of their legitimate due, so that they may be brought to the same platform so as to enable them to compete with the

others. The aim of the Constitution is to equip each member of the weaker sections with the ability to compete with other citizens with dignity on a level playing field. The pitiable condition of the scheduled castes is recognised by the Constitution as a national problem. The responsibility of improving the lot of Scheduled Castes has therefore been entrusted to the National Commission and Parliament. (**E.V. Chinnaiah v. State of A.P**).

In **State of Kerala Vs. N.M.Thomas**, the apex Court, speaking through K.K.Mathew, J, held as follows:

The ultimate reasons for the demand of equality for the members of backward classes is a moral perspective which affirms the intrinsic value of all human beings and class for a society which provides those conditions of life which men need for development of their varying capacities. It is an assertion of human equality in the sense that it manifests an equal concern for the well being of all men. On the one hand it involves a demand for the removal of those obstacles and impediments, which stand in the way of the development of human capacities, that is, it is a call for the abolition of unjustifiable inequalities. On the other hand, the demand itself gets its sense and moral driving force from the recognition that *"the poorest he that is in England hath a life to live as the greatest he"* ***(John Rees: Equality)"***

The fact that Scheduled castes need special protection to which not even the other backward classes are entitled to was emphasized in **Chattar Singh Vs. State of Rajasthan** wherein the Supreme Court held thus:

"The State had evolved the principle of reservation to an office of the State or post as an affirmative action to accord socio-economic justice guaranteed in the Preamble of the Constitution; the fundamental rights and the directive principles which are the trinity of the Constitution to remove social, educational and economic backwardness as a constitutional policy to accord equality of opportunity, social status or dignity of person as is enjoined in Articles 14, 15, 16, 21, 38, 39, 39-A, 46 etc. Article 335 enjoins the State to take the claims of Dalits and Tribes into consideration for appointment to an office/post in the services of the State consistently with efficiency of administration. Though OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes. Articles 15(2) and 17 furnish evidence of historical and social dissatisfaction inflicted on them. The object of reservation for the Scheduled Castes and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated as dissimilar and they do not form an integrated class with Dalits and Tribes for the purpose of Article 16(4) or 15(4)……..

…….. By process of interpretation, OBCs cannot be declared alike the Scheduled Castes and Scheduled Tribes. Therefore, the contention that in view of the doctrine of fusing "any backward class of citizen" in Article 16(4), further classification of Scheduled Castes and Scheduled Tribes and OBCs as distinct classes for the purpose of reservation and

omission to extend the same benefits to OBCs violates Article 14 is devoid of substance. If the logic of equality as propounded by minority Judge is given acceptance, logically they are also entitled to reservation of seats in the House of the People or in the Legislative Assemblies of States, though confined to Scheduled Tribes and Scheduled Castes, by operation of Article 334(*a*) of the Constitution with a non obstante clause engrafted therein. The Founding Fathers of the Constitution, having been alive to the dissimilarities of the socio-economic and educational conditions of the Scheduled Castes and Scheduled Tribes and other segments of the society have given them separate treatment in the Constitution. The Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to Scheduled Castes and Scheduled Tribes, was void under Articles 16(1) and 14 of the Constitution……..”

In **S. Ramireddy** (10 supra), this court held thus:

“The Constitution of India confers special protection to the Scheduled Castes and Scheduled Tribes and gives a mandate to the State to accord favoured treatment to them. Article 16 (4) of the Constitution of India enables the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens, which, in the opinion of the State are not adequately represented in the services under the State. Article 16 (4-A) of the Constitution of India enables the State to make provision for reservation in matters of promotion to any class or classes of post in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, which in the opinion of the State are not adequately represented in the services under the State. Article 46 of the Constitution of India enjoins upon the State to promote with special care, the educational and economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and exploitation. Article 335 of the Constitution of India provides that the claims of the members of the Scheduled Castes and Scheduled Tribes to the services and posts in the Union and the States shall be taken into consideration. Article 338 of the Constitution of India provides for appointment by the President of a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for them under the constitution. Article 341 of the Constitution of India enables the President, by public notification, to specify castes, races or tribes which shall be deemed to be Scheduled Castes in the States and Union Territories. Article 342 of the Constitution of India contains a similar provision for the Scheduled Tribes. Reservation is provided in favour of Scheduled Castes and Scheduled Tribes, with a view to secure their adequate representation. The principal aim of Arts. 14 and 16 of the Constitution of India is equality and equality of opportunity; Clause (4) of Article 16 of the Constitution of India, is a special provision and is a means for achieving the very same objective. If equality of opportunity, in employment is to be given to the members of the Scheduled Castes and Scheduled Tribes, their social, educational and economic environment has to be taken note of. Cultural and material suppression has, over the ages, affected their growth and their social conditions are steeped in poverty and squalor. Had the Constitution of India, not given them the desired protection, they would have continued to remain” the most backward of backwards” in the society. Equality, in letter and spirit, can be achieved only by upliftment of the Scheduled Castes and Scheduled Tribes to a certain level where they can compete and

be on par with the other sections of the society educationally, economically and socially."

In his Article on **"Pursuing Equality in the Land of Hierarchy: An Assessment of India's Policies of Compensatory Discrimination for Historically Disadvantaged Groups, MARC GALANTER** would say**:-**

"But if our perception of past injustice does not provide a usable map for distributing reparative entitlements, it can inform our vision of the present, sensitizing us to the traces and ramifications of historic wrongs. The current scene includes groups which are closely linked to past victims and which seem to suffer today from the accumulated results of that victimization. In a world in which only some needs can be met, the inevitable assignment of priorities may take some guidance from our sense of past injustice – thus providing the basis for a metaphoric restitution…….

…….The compensatory discrimination policy is not to be judged only for its instrumental qualities. It is also expressive: through it Indians tell themselves what kind of people they are and what kind of nation. These policies express a sense of connection and shared destiny. The groups that occupy the stage today are the repositories and transmitters of older patterns. Advantaged and disadvantaged are indissolubly bound to one another. There is a continuity between past and future that allows past injustices to be rectified. Independence and nationhood are an epochal event in Indian civilization which make possible a controlled transformation of central social and cultural arrangements. Compensatory discrimination embodies the brave hopes of India reborn that animated the freedom movement and was crystallized in the Constitution. If the reality has disappointed many fond hopes, the turn away from the older hierarchic model to a pluralistic participatory society has proved vigorous and enduring……."

Since scheduled castes constitute a class, distinct from other sections of our society, protective discrimination in their favour cannot be faulted. Applying a separate criteria for their benefit would indeed be justified. Taking the entire corporation as one single unit, for operating the roster backwards in favour of the scheduled castes, while taking the agro-chemicals division as the unit for terminating the services of others, would, in my view, not violate Articles 14 and 16 of the Constitution of India.

The corporation has not considered operation of roster backwards to the petitioners, (all of whom were executives appointed in posts reserved for the scheduled castes), when the agro chemicals division was closed, the employees working therein were declared surplus and were offered VRS. As emphasized by Sri G. Jayaprakash Babu, closure of the agro chemicals division has resulted in a situation where there is no officer, belonging to the Scheduled Castes, now working in the respondent corporation. It is true that in **Ajit Singh II** (11 supra) the Supreme

Court held that since both Articles 16(4) and 16(4-A) open with a non obstante clause — "*Nothing in this Article shall prevent the State* from making any provision for reservation....", there was a marked difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4-A) on the other and there was no directive or command in Article 16(4) or Article 16(4-A) as in Article 16(1), the language in each of Articles 16(4) and 16(4-A) was in the nature of an enabling provision. The Supreme Court held that both Articles 16(4) and 16(4-A) did not confer any fundamental rights nor did they impose any constitutional duties but were only in the nature of enabling provisions vesting a discretion in the State to consider providing reservation if the circumstances mentioned in those articles so warranted.

Without going so far as to issue a Mandamus to the respondents to operate the roster backwards in favour of the scheduled castes, posted earlier in the closed agro chemicals division, I am of the view that the constitutional safeguards, for protecting the interests of the scheduled castes, would be effectuated if the respondent corporation were directed to consider the feasibility of operating the roster backwards in favour of the petitioners, erstwhile employees of the corporation whose services were terminated pursuant to the closure of the agro chemicals division, all of whom belong to the scheduled castes and have chosen not to take V.R.S. with the fond hope of continuing in the services of the respondent – corporation. The respondents shall also examine as to whether, on such operation, the petitioners are eligible and qualified to be appointed in similar posts in other divisions of the corporation, and if so, consider their cases for appointment.

EQUIVALENCE OF QUALIFICATIONS AND EQUATION OF POSTS

Sri G. Jayaprakash Babu, learned counsel for the petitioners, would contend that the petitioners are agriculture graduates and that agricultural engineering was one among the various subjects in their course of study. According to the learned counsel, the qualification prescribed for working in equivalent posts in other divisions/departments of the corporation is agricultural engineering, which the petitioners possess. Learned counsel would refer to several instances earlier where employees were transferred from one division to the other. While the fact that employees of the corporation were shifted from one division to the other is not in dispute, Sri Meherchand Noori, learned counsel for the respondent, would submit that the employees so transferred possessed the requisite qualifications for

discharging the functions attached to the posts to which they were transferred, while the petitioners do not. Should this court taken upon itself the delicate task of determining equivalence of educational qualifications and equation of posts?

In **Mohd. Shujat Ali v. Union of India** the Supreme Court held:-

"……It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. ……"

In **Medical Council of India v. Silas Nelson**, the Supreme Court held that equivalence has to be decided only by an expert body, that too, on technical and academic matters and since it is not in the domain of assessment or evaluation by the Court, the High Court should not have embarked on the determination of equivalence on the basis of sketchy materials placed before it.

This court neither has the expertise nor the wherewithal to determine questions relating to equivalence in educational qualifications and experience or regarding equation of posts. The questions whether there are posts in other divisions which are equivalent to the posts held earlier by the petitioners, whether the petitioners possess the necessary qualifications and experience required to be appointed in such posts are matters not for this court to evaluate but for the corporation, on a detailed consideration of all aspects, to determine.

CREATION AND ABOLITION OF POSTS:

The allegation that the activities of the erstwhile agro chemicals division have been revived, consequent upon establishment of agro-rythu seva kendras, necessitating employment of several persons is denied and Sri Meher Chand Noori, learned counsel for the respondent, would contend that the said agro rytu seva kendras are established as a self-employment measure for unemployed youth and

that the corporation has no intention of recruiting personnel for this purpose.

It is clear from G.O.Ms.No. 114, dated 20.05.2005 that the A.P. State Agro Industries Development Corporation has been entrusted the duty of setting up agro rytu seva kendras for routing seeds, fertilizers, pesticides and implements for being supplied to farmers.

In **N. Ramanatha Pillai** (12 supra)**,** the Supreme Court held:-

"……..The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of governmental policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public……The abolition of post may have the consequence of termination of service of a government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an executive policy decision. Whether after abolition of the post the Government servant who was holding the post would be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post……

In **DR. N.C. Singhal v. Union of India**, the Supreme Court held thus:

"…….Creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the government in the interest of administration and general public (see N. Ramanatha Pillai v. State of Kerala (AIR 1973 SC 2641). The court would be the least competent in the face of scanty material to decide whether the government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fide, legal or factual……..."

In **K. Rajendran** (13 supra), the Supreme Court held:-

"……In modern administrations, it is necessary to recognise the existence of the power with the legislature or the executive to create or abolish posts in the civil service of the State. The volume of administrative work, the measures of economy and the need for

streamlining the administration to make it more efficient may induce the State Government to make alterations in the staffing patterns of the civil service necessitating either the increase or the decrease in the number of posts. This power is inherent in the very concept of governmental administration. To deny that power to the Government is to strike at the very roots of proper public administration. The power to abolish a post which may result in the holder thereof ceasing to be a government servant has got to be recognised. But we may hasten to add that any action, legislative or executive, taken pursuant to that power is always subject to judicial review.

It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the court has no voice……"

In **T. Venkata Reddy v. State of A.P** the Supreme Court held that the petitioners were not, as a result of abolition of posts, deprived of their right to life and liberty, under Article 21 of the Constitution of India.

In **State of Haryana v. Piara Singh,** the Supreme Court held:-

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instruct-ions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16……."

In **Rajendra v. State of Rajasthan** the Supreme Court held :-

"…….the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. The decision taken by the respondent-State to abolish the posts was a bona fide decision taken after due application of the mind by appointing an Expert Committee which went deep into all relevant considerations and made recommendations in the interest of rationalisation. The decision is based on administrative and financial considerations. There is nothing wrong in the Societies having acted on the policy decision of the State Government."

In **Union of India v. Lakhpati Singh Verma,** the Supreme Court held:-

"……However, if the very posts against which the respondents have been appointed temporarily are themselves abolished, then there could be no question of a temporarily appointed person continuing to hold that non-existing post. The order of reversion to their original substantive post cannot be faulted in the present case."

In **BALCO Employees' Union** (15 supra) the Supreme Court held that abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution of India.

In **P.U. Joshi v. Accountant General,** the Supreme Court held:-

"……..Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to

even an existing service……."

Whether or not the corporation should recruit personnel for the activity, relating to the setting up of agro rythu seva kendras, are matters in the realm of executive policy and since creation and abolition of posts is for the corporation, in its wisdom, to decide no mandamus can be issued directing it to create posts or to fill up the said posts appointing the petitioners therein. While it is not for the courts to direct, by a mandamus, creation or abolition of posts, since they are matters of executive policy, judicial review is permissible to an examination as to whether these policy decisions are so arbitrary or irrational as to violate Articles 14 and 16 of the Constitution of India.

Operating the roster backwards would not require posts to be created and would only result in accommodating employees, belonging to the Scheduled castes, in existing posts held by others. Consequent upon such accommodation, the services of persons who had earlier held these posts, and which are filled with the appointment of employees belonging to the Scheduled castes, is liable to be terminated. Operation of roster backwards would ensure that the existing staff, would include employees belonging to the Scheduled castes, to the extent of the percentage of posts reserved in their favour. It would also be ensured that an anomalous situation, such as the present, does not arise wherein there is not even a single officer, belonging to the Scheduled caste, left in the entire organization.

The fact that the corporation has engaged the services of Sri P. Sudhakar Reddy, an agricultural engineering graduate is not in dispute. As to whether the corporation could instead have appointed the petitioners and whether any one of the petitioners possess qualifications equivalent to the one possessed by Sri P. Sudhakar Reddy is for the corporation to examine and not for this court to evaluate. While Sri Meher Chand Noori, learned counsel for the respondent, would submit that Sri P. Sudhakar Reddy is an expert and the petitioners are not, there is nothing on record to show that the respondents had examined the issue as to whether any of the petitioners could have been appointed in the post to which Sri P. Sudhakar Reddy was brought on deputation.

The contention that the corporation has done away with the services of Scheduled Caste officers, on the ground that the agro chemicals division has been

closed, while at the same time engaging the services of candidates belonging to the open category, in posts which could have been filled up by continuing such of the Scheduled Caste officers, eligible and qualified to hold such posts, if true, is undoubtedly a cause for concern. If, indeed, any of the petitioners are eligible and qualified to hold the post which has been filled up with the appointment of Sri P. Sudhakar Reddy, an employee of the A.P. Agricultural University brought on deputation to the corporation, it would be a mockery of the safeguards and the protection conferred on the scheduled castes, under the Constitution of India.

RELIEF TO BE GRANTED:

The corporation shall consider operating the roster backwards, insofar as the petitioners are concerned, all of whom belong to the Scheduled Castes, and examine the feasibility of accommodating them in equivalent/similar posts in other divisions, including posts filled up subsequent to the closure of the agro chemicals division, with deputationists or otherwise, provided, of course, the corporation is satisfied, for just and valid reasons, that they possess the requisite qualifications and the experience required to discharge the functions prescribed for the said posts. The Board of Directors, the top decision making-body of the corporation, shall consider and take an appropriate decision in this regard, in accordance with the aforementioned observations, within a period of four months from the date of receipt of a copy of the order. The decision of the Board of Directors, shall be communicated to the petitioners within two weeks thereafter.

The writ petitions are accordingly disposed of. There shall however be no order as to costs.

Dt: .11.2005

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RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.

B/o

ASP/ MRKR